

## REMARKS

In response to the Office Action mailed on May 20, 2004, Applicants respectfully request reconsideration. Claims 1-13, 15, and 19-36 are now pending in this Application. Claims 1, 15, 19, 26, 27, 28 and 29 are independent claims and the remaining claims are dependent claims. In this Amendment, claims 1, 15, 20, 26, 28, 29, 31 and 34 have been amended and claims 14 and 16-18 have been cancelled. A version of the claims containing markings to show the changes made is included hereinabove. Applicant(s) believe that the claim(s) as presented are in condition for allowance. A notice to this effect is respectfully requested.

The Examiner stated that the Title of the invention is not descriptive. The title has been amended to now recite "Methods of Determining Communications Protocol Latency".

Claims 1, 3-14, 15-27 and 29-35 were rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent Publication No. 2002/0105911 to Pruthi et al. (hereinafter Pruthi). Claim 1 has been amended to recite that a plurality of different components are derived in response to the monitoring, the different components including round-trip network latency, TCP connect time, TCP connect processing time, web server processing time and remaining content time. Support for this amendment can be found throughout the specification as filed, for example at paragraphs, 17, 20, 23, 24, and 54 and in Figure 5. Pruthi fails to disclose or suggest the determination of TCP connect time, TCP connect processing time, web server processing time and remaining content time. Accordingly, since Pruthi fails to disclose or suggest the determination of TCP connect time, TCP connect processing time, web server processing time and remaining content time, while amended claim 1 recites such, claim 1 is believed allowable over Pruthi. Claim 14 has been cancelled without prejudice.

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Claim 15 has been amended in a similar manner as claim 1 and is therefore believed allowable over Pruthi for the same reasons as claim 1. Further, claim 15 recites that the service is a subscription-based service. As recited in the specification as filed at paragraph 48, a subscription-based service is a service requiring some form of payment. The Examiner stated that Pruthi discloses that monitoring and deriving are performed on a subscription basis wherein selecting a hyperlink is interpreted as subscribing to access monitoring data. Applicant respectfully disagrees with the Examiner's statement. The mere selection of a hyperlink is used to provide the user with another web page or additional web page content, not to subscribe to a subscription-based service. Pruthi fails to disclose or suggest such a subscription-based service.

Claims 16-18 have been cancelled without prejudice.

Claim 19 discloses in part "using IP Header sequence number to help distinguish out-of-order TCP packets from retransmitted TCP data packets ...". The Examiner stated that Pruthi discloses the same, however, a review of Pruthi (specifically paragraph 47) reveals that Pruthi discloses receiving out-of-order ATM cells and orienting them into the correct order. Pruthi fails to disclose or suggest a method for determining communications protocol latency that includes distinguishing out-of-order packets from retransmitted packets. Accordingly, claim 19 is believed allowable over Pruthi.

Claim 20 has been amended in a similar manner as claim 1 and is therefore believed allowable over Pruthi for the same reasons as claim 1. Claims 21-25 depend from claim 20 and are believed allowable as they depend from a base claim that is believed allowable.

Claim 26 discloses calculating network retransmission time, and using this calculated network retransmission time when computing web server processing

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time and TCP connect time and the number of packets lost. The Examiner stated that Pruthi discloses the same at in paragraphs 60-68. A careful review of Pruthi reveals that Pruthi fails to disclose or suggest calculating network **retransmission** time. Since Pruthi fails to disclose or suggest calculating retransmission time, Pruthi also fails to disclose or suggest the use of the calculated retransmission time when computing web server processing time, TCP connect time and the number of packets lost. Accordingly, claim 26 is believed allowable over Pruthi.

Claim 27 discloses a method of determining whether web page content is static or dynamic. The Examiner stated that Pruthi discloses the same at paragraphs 122 through 131. A review of Pruthi reveals that Pruthi fails to disclose or suggest the determination of whether web page content is static or dynamic. Accordingly, claim 27 is believed allowable over Pruthi.

Claim 28 has been amended in a similar manner as claim 1 and is therefore believed allowable over Pruthi for the same reasons as claim 1.

Claim 29 has been amended in a similar manner as claim 1 and is therefore believed allowable over Pruthi for the same reasons as claim 1. Claims 30-35 depend from claim 29 and are believed allowable as they depend from a base claim that is believed allowable.

Claims 2, 28 and 36 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Pruthi in view of U.S. Patent No. 6,449,647 to Colby et al. (hereinafter Colby). Pruthi has been discussed above, and Colby also fails to disclose or suggest that a plurality of different components are derived in response to the monitoring, the different components including round-trip network latency, TCP connect time, TCP connect processing time, web server processing time and remaining content time. Claim 28 has been amended in a similar manner as claim 1 and is therefore believed allowable over the combination of

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Pruthi and Colby for the same reasons as claim 1 is believed allowable over Pruthi. Claims 2 and 36 depend from claims 1 or 29 and are believed allowable as they depend from a base claim that is believed allowable.

The prior art made of record is not believed to disclose or suggest the present invention.

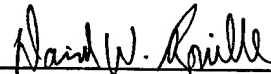
In view of the above, the Examiner's rejection and objections are believed to have been overcome, placing claims 1-13, 15, 19, and 20-36 in condition for allowance, and reconsideration and allowance thereof is respectfully requested.

If the U.S. Patent and Trademark Office deems a fee necessary, this fee may be charged to the account of the undersigned, Deposit Account No. 50-0901.

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If the enclosed papers or fees are considered incomplete, the Patent Office is respectfully requested to contact the undersigned collect at (508) 366-9600, in Westborough, Massachusetts.

Respectfully submitted,



David W. Rouille, Esq.  
Attorney for Applicant(s)  
Registration No.: 40,150  
CHAPIN & HUANG, L.L.C.  
Westborough Office Park  
1700 West Park Drive  
Westborough, Massachusetts 01581  
Telephone: (508) 366-9600  
Facsimile: (508) 616-9805  
Customer No.: 022468

Attorney Docket No.: EMPIR-046PUS

Dated: 8/16/04

Initials: DWR

Docket No.: EMP04-66

Mailing Date: August 16, 2004

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Applicant(s): Parag Pruthi, Andrew Heybey, Thekkthalackal V. Kurien.  
Serial No.: 09/740,804  
For: Apparatus and Method for Collecting and Analyzing

Communications Data

Date received by the PTO:

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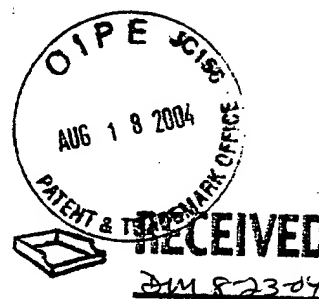
Applicant(s): Parag Pruthi, Andrew Heybey, Thekkthalackal V. Kurien.

Serial No.: 09/740,804

For: Apparatus and Method for Collecting and Analyzing

Communications Data

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BY

8/23/04  
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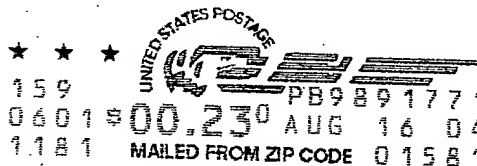
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**PATENT, TRADEMARK & COPYRIGHT LAW**

**Westborough Office Park**

**1700 West Park Drive**

**Westborough, MA 01581**



*DM 8/23/04*



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ATTORNEY DOCKET NO.: EMP04-66  
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant(s): Robert Curley and Eli Patashnik  
Serial No.: 09/740,804  
For: METHOD AND APPARATUS FOR PROVIDING MEASUREMENT  
AND UTILIZATION OF NETWORK LATENCY IN TRANSACTION-  
BASED PROTOCOLS  
Filing Date: December 21, 2000  
Examiner: Paul H. Kang  
Art Unit: 2141  
Conf. No.: 6420

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I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: **MAIL STOP PETITION**, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on:

Date: February 15, 2005

By: Mary A. Maietta  
(Typed or printed name of person mailing  
Document, whose signature appears below)

Signature: *Mary A. Maietta*

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**MAIL STOP PETITION**  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**DECLARATION OF DAVID W. ROUILLE, ESQ.**

I, David W. Rouille, Esq. declare as follows:

I am an attorney in the law firm of Chapin & Huang, L.L.C. (Chapin & Huang) and an attorney of record in the above-identified U.S. Patent Application.

I typically prepare, review and sign correspondences to the U.S. Patent Office on

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behalf of certain Applicants. When I sign a correspondence to the U.S. Patent Office which has a Certificate of Mailing under 37 CFR §1.8, I make sure that a secretary has signed that Certificate of Mailing prior to signing the correspondence. I then sign the correspondence and give the correspondence back to that secretary for submission to the U.S. Patent Office. I require that secretary to (i) create a file copy of that signed correspondence for our file wrapper and (ii) deposit the signed correspondence with the U.S. Postal Service as first class mail addressed to the U.S. Patent Office.

In connection with the current case, I first became aware of the holding of abandonment on February 8, 2005, upon receipt of Notice of Abandonment dated January 19, 2005. At that time, I examined the file wrapper and discovered a copy of a signed reply to an Office Action mailed on August 16, 2004. The reply was signed by me and included a Certificate of Mailing under 37 CFR §1.8 which was dated August 16, 2004 and which was completed by my secretary, Gail L. Hardy. Accordingly, to the best of my knowledge and belief, the reply was deposited with the U.S. Postal Service as first class mail addressed to the U.S. Patent Office in accordance with 37 CFR §1.8 on August 16, 2004 by Gail L. Hardy.

Moreover, to the best of my knowledge and belief, I have no reason to believe that the signed reply was not properly submitted by my secretary on August 16, 2004. Rather, knowing the procedures for outgoing mail and my secretary's experience with them, I have reasonable basis to expect that the reply was deposited with the U.S. Postal Service on the date indicated.

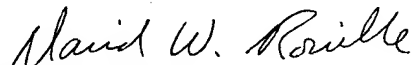
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On August 23, 2004, we received the returned postcard stamped by the United States Patent and Trademark Office with the date of August 18, 2004 thus showing the Amendment was received by the United States Patent and Trademark Office.

On February 8, 2005, I received a Notice of Abandonment which had been mailed January 19, 2005 indicating that the above-identified patent application has been held abandoned. Accordingly, I submit that the accompanying petition to withdraw the Notice of Abandonment is being promptly submitted as required by 37 C.F.R. § 1.8(b)(1).

All statements made herein of my own knowledge are true and all statements made on information and belief are believed to be true; and further these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patents issued thereon.

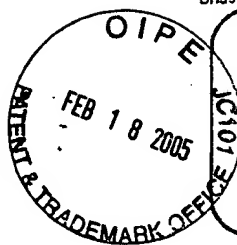
Respectfully submitted,

  
\_\_\_\_\_  
David W. Rouille, Esq.  
Attorney for Applicant  
USPTO Registration No.: 40,150  
CHAPIN & HUANG, L.L.C.  
Westborough Office Park  
1700 West Park Drive  
Westborough, Massachusetts 01581  
Telephone: (508) 366-9600  
Facsimile: (508) 616-9805

Attorney Docket No.: EMP04-66

Dated: February 15, 2005

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| Application Number     | 09/740,804    |
| Filing Date            | 12/21/00      |
| First Named Inventor   | Robert Curley |
| Art Unit               | 2141          |
| Examiner Name          | Paul H. Kang  |
| Attorney Docket Number | EMPO4-66      |

I hereby revoke all previous powers of attorney or authorizations of agent given in the above-identified application:

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**SIGNATURE of Applicant or Assignee of Record**

Name Edward Goldfinger

Signature

Date

July 20, 2000

Telephone

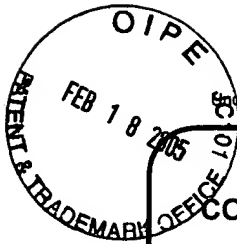
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This collection of information is required by 37 CFR 1.36. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 3 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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|   | Filing Date            | December 21, 2000 |
|   | First Named Inventor   | Robert Curley     |
|   | Art Unit               | 2141              |
|   | Examiner Name          | Paul H. Kang      |
|   | Attorney Docket Number | EMP04-66          |

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- ☒ Attorney or agent of record. Registration Number 40,150
- ☐ Registered practitioner named in the application transmittal letter in an application without an executed oath or declaration. See 37 CFR 1.33(a)(1). Registration Number \_\_\_\_\_

|                       |   |                        |
|-----------------------|---|------------------------|
| Typed or Printed Name | David W. Rouille, Esq.  |                        |
| Signature             |  |                        |
| Date                  | February 15, 2005   | Telephone 508-366-9600 |

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below\*.

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